

**DEPARTMENT OF STATE REVENUE**  
**FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER 940042 ST**  
**SALES AND USE TAX**

**For Tax Periods: 1987 Through 1990**

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**Issues**

**1. Sales Tax-Imposition of Sales Tax**

**Authority:** IC 6-2.5-5-1, IC 6-8.1-5-1 (a).

Taxpayer protests the imposition of sales tax on trade-ins.

**2. Tax Administration-Records**

**Authority:** IC 6-8.1-5-1 (a).

Taxpayer protests the disallowance of exempt sales to another dealer.

**Statement of Facts**

Taxpayer is an individual who owns and operates an unincorporated vacuum cleaner distributorship. The Indiana Department of Revenue audited Taxpayer for the years 1987-1990. After the audit, additional sales and use taxes and penalty were assessed. Taxpayer protested the assessment. After a hearing, Taxpayer's protest was denied. Taxpayer requested and was granted a rehearing. Further facts will be provided as necessary.

**1. Sales Tax-Imposition of Sales Tax**

**Discussion**

Taxpayer disputes the amount of the assessment as determined by the auditor. Taxpayer had merely minimal books and records for his business. Therefore the assessment was based on the best information available pursuant to IC 6-8.1-5-1 (a) which provides for the assessment of additional sales and use taxes as follows:

If the department believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the unpaid tax on the basis of the best information available to the department. . . The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

At the rehearing, Taxpayer presented two new arguments. Taxpayer's first new argument concerned trade-ins. The auditor presumed that Taxpayer sold the trade-ins as inventory and should have collected and remitted sales tax on these presumed sales pursuant to IC 6-2.5-5-1. Taxpayer's product has a markup of about 300%. This markup allows the salespersons a lot of options and gimmicks to make the sale. One common sales pitch is to offer cash discounts, large trade-in discounts as well as prearranged financing. A review of the invoices by the auditors showed many trade-ins. Salespersons would sometimes give individuals a \$100.00 trade-in allowance for a common broom. Salespersons were to sell new vacuums and not peddle any used and unwarranted products. Taxpayer often gifted usable trades to the Salvation Army, local Rescue Mission and other local charities. Taxpayer presented two letters evidencing that it had indeed given vacuums to charitable agencies. Taxpayer discarded the remainder of the trade-ins. No instances of sales of used equipment or any unexplained deposits which would indicate that the trade-ins were being sold were found by the auditors. Taxpayer has sustained its burden of proof to show that the trade-ins were not resold. Since there were no retail sales, Taxpayer did not have the duty to collect and remit sales tax.

### **Finding**

Taxpayer's first point of protest is sustained.

## **2. Tax Administration-Records**

Taxpayer's second protest concerns the disallowance of the exemption for sales to another authorized dealer. Taxpayer contended that the sales were actually exempt wholesale sales to the other dealer who should have collected and remitted the sales tax. Taxpayer had a salesman who desired to be a dealer. Taxpayer assisted the salesman in filling out the necessary papers to become a dealer. The salesman obtained a Retail Merchant's certificate and then ran into problems with his credit ratings and could not find an institution willing to finance his sales to customers. Taxpayer contends that he told the salesman to use his invoices when financing was needed to close a sale. Upon Taxpayer's receipt of the financed money, Taxpayer would forward the money to the salesman less any finance charge incurred.

Pursuant to IC 6-8.1-5-1 (a) Taxpayer had the duty to produce adequate books and records to sustain its burden of proof the sales the sales to the salesman should have been exempt from the sales tax. Taxpayer did not sustain this burden of proof.

Alternatively, the other authorized dealer could be considered to be selling the subject vacuum cleaners as a salesman for Taxpayer. This would be evidenced by the fact that Taxpayer's invoices were used and Taxpayer arranged the financing. In this case, Taxpayer would have the responsibility to collect and remit sales tax on the transactions. Under this possible explanation, Taxpayer would have to prove that the other dealer was not actually acting as a salesman for Taxpayer. Taxpayer did not produce adequate records to sustain its burden of proof that the sales were not his and he was not responsible for collecting and remitting the sales tax.

### **Finding**

Taxpayer's second point of protest is denied.

KA/PE/MR--001401